



# California Regional Water Quality Control Board

## Santa Ana Region



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Arnold Schwarzenegger  
Governor

November 24, 2008

Jim Jachetta  
ProLogis  
4041 MacArthur Boulevard, Ste. 400  
Newport Beach, CA 92660

### CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR PROLOGIS OLEANDER BUSINESS PARK, RIVERSIDE COUNTY (ACOE REFERENCE NO. 2006 – 00625 – SJH)

Dear Mr. Jachetta:

On June 24, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), submitted on your behalf by ICF Jones & Stokes, for the development of the ProLogis Oleander Business Park (Parcel Map No. 33942) in unincorporated Riverside County. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments ("Basin Plan"):

#### Project Description:

Development of seven parcels on 68.81 acres. A portion of the development lies west of Harville Avenue and extends between Nandina and Old Oleander Avenues, while the portion east of Harville Avenue extends between Nandina and Oleander Avenues. Development of five of the parcels will ultimately result in the construction of five industrial buildings totaling 1,207,303 square feet. Two parcels will be subject to an easement to the Riverside County Flood Control and Water Conservation District ("District") for drainage along the east and north sides of the project. The project is generally located within Section 35 of Township 3 South, Range 4 West, of the U.S. Geological Survey *Steele Peak, California*, 7.5-minute topographic quadrangle map (33 deg. 51 min. 49 sec. N/ -117 deg. 15 min. 51 sec. W).

Receiving water: three un-named ephemeral drainages, tributary to the Perris Valley Storm Drain.

Fill area: 0.09 acre of permanent impact to ephemeral drainages (1,192 linear feet).

**California Environmental Protection Agency**



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Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 39.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:  
Onsite Water Quality Standards Mitigation Proposed:

- Nuisance flow and 'first-flush' discharges from the project will be treated in six extended detention basins along the west side of Harville Avenue, in two extended detention basins along the east side of the project prior to discharging into the District's drainage easement, and in bio-swales along Harville Avenue and along the northeast portion of the site. The basins and swales will be operated and maintained by the property owner (ProLogis).
- Additional site-specific best management practices ("BMPs") will be specified in the sites' Storm Water Pollution Prevention Plan(s) ("SWPPPs") and Water Quality Management Plan(s) ("WQMPs").

Offsite Water Quality Standards Mitigation Proposed:

- An in-lieu fee will be paid to the Santa Ana Watershed Association towards the eradication of 0.27 acre of invasive plant species.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required, as is development of a SWPPP to control the discharge of pollutants from the project site.

Discharges of fill to waters of the State that are not within the jurisdiction of the Corps (non-federal waters) will occur with grading for the proposed development. The waters of the State not within Corps jurisdiction consist of six seasonal pools, totaling 0.024 acre, that have been documented to support prey species for wildlife, indicative of the Wildlife Habitat beneficial use. The proposed discharge may be authorized under the State Water Resources Control Board's Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ)."

According to a Conceptual Mitigation Plan, submitted via electronic mail on October 16, 2008, impacts to the beneficial uses of the seasonal pools will be compensated through the



creation of 0.024 acre of similar pools on land under the control of the Riverside County Regional Conservation Authority. However, due to economic reasons, authorization for the proposed discharge of fill to non-federal waters of the State will be sought under Order No. 2004-0004-DWQ at a later time.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act (CEQA), the County of Riverside certified an Environmental Impact Report (EIR) for the proposed project on September 16, 2008.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR prepared by the lead agency in determining whether to approve a Section 401 Certification. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the EIR prepared for the proposed project in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR relating to water quality. Based on the mitigation proposed in the EIR, and the conditions set forth in this Certification, impacts to water quality shall be reduced to a less than significant level and beneficial uses shall be protected. Thus, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.

**This 401 Certification is contingent upon the execution of the following conditions:**

1. This Certification is conditioned upon the construction of all storm water treatment facilities as proposed. All structural storm water treatment facilities must be constructed and operational prior to the occupancy of any industrial building.
2. An in-lieu fee must be paid to the Santa Ana Watershed Association towards the eradication of 0.27 acre of invasive species within and adjacent to waters of the State in the Upper Santa Ana Watershed. The fee payment must include funding for a minimum of 6-years of follow-on maintenance and the completion of biological condition assessments, using published and generally accepted methods (e.g., California Rapid Assessment Method) for the purpose of evaluating the marginal improvement to the eradication project area. Evidence of the fee payment must be provided to the Executive Officer by February 24, 2009.
3. Regional Board staff and other authorized representatives shall be allowed:



- a. Entry upon premises where storm water treatment facilities are located, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;
  - b. Access to copy any records that are kept under the requirements of this Certification and applicable waste discharge requirements;
  - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project site; and
  - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification and applicable waste discharge requirements.
4. This Certification and any subsequent amendments must be maintained on site as a denoted element of any project SWPPP or WQMP.
  5. This Certification is transferable only upon written notice to the Executive Officer. The notice must include written acknowledgement of this Certification by the transferee's authorized representative.
  6. The applicant must comply with the conditions and provisions of the Corps' Clean Water Act Section 404 permit(s).

**Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:**

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any



remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at [www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Stephanie Hall  
State Water Resources Control Board, OCC – David Rice  
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme  
California Department of Fish and Game – Michael Flores  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

